

REMARKS:

Claims 1-10 and 12-14 are pending and stand rejected.

Claim 1 was amended to remove the phrase “preferably between 600 and 5 000 ppm”. This preferred embodiment is now in new claim 15.

Claim 1 was also amended to include the limitations of claim 2. Claim 2 has been cancelled without prejudice.

Claim 6 was amended to remove the multiple dependency, and to incorporate the limitations of claim 1.

It is believed that no new matter has been added by this amendment.

Decision of the Board of Appeals and Interferences

Applicant had appealed the Examiner’s use of the EP equivalent of US 6,528,587 as a 35 U.S.C. §103 reference, after Applicant had filed a Terminal disclaimer over US 6,528,587. The Board affirmed the Examiner’s use of the EP equivalent (EP 1,136,536) as a 35 U.S.C. §103 reference in the present case.

35 U.S.C. §103(a)

Claims 1-10 and 12-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Robert et al (EP 113656 – using US 6,528,58 as the translation). The Robert reference is 100 percent owned by Applicant, and includes common inventors. The Robert reference fails to teach or disclose that the dilutant polyolefin (B) is a metallocene polyethylene, and that the adhesive strength of the coextrusion tie increases by 5 to 50 percent from time zero to eight days.

Applicant’s invention is a selection invention from the Robert reference. Applicant has found that coextrusion ties layers having metallocene polyethylene as the dilutant ethylene (B) solves a problem by forming increased adhesion, especially with a polyester layer and EVOH. While metallocene PE is listed as a possible (B) in Robert (Col. 4, line 34); and the coextrusion tie could be used with EVOH and polyesters (Col. 5, line 7), the specific use of the cografted (A) with a metallocene polyethylene (B) to produce a coextrusion tie that not only has better initial adhesion, but further has an adhesive strength that increases over the first 8 days after extrusion. The Roberts reference fails to recognize the type of dilutant polyethylene (B), or adhesive strength increase on aging as result effective variables. Since only result effective variables can

be optimized by routine experimentation (MPEP 2144.05), one of ordinary skill in the art would have no motivation to arrive at Applicant's claims based on the Robert reference and routine experimentation.

The unexpected effect of Applicant's selection invention is illustrated in Table 2 on page 16 of Applicant's Application. The compositions of the invention (diluted with metallocene PE – Ex 1-4) have a much higher initial peel strength in a three layer PET/tie/PE structure. The lowest peel strength of the composition of the invention being 11.6 N/15 mm, while the best of the comparative examples (same layer A but non-metallocene PE dilutants) is only 6.5 N/15mm – almost twice as good. A similar result is shown in a 5-layer composite PET/tie/EVOH/tie/PET. Even more surprising is that the compositions of the invention increased in adhesiveness significantly from t=0 to t=8 days, while the comparative examples either increased only slightly – and in most cases decreased significantly.

The Roberts reference fails to teach or disclose all of Applicant's claim limitations, and therefore fails to present a *prima facie* case of obviousness.

In view of the above, the Applicant believes that the reasons for rejection have been overcome, and the claims herein should be allowable to the Applicant. Accordingly, reconsideration and allowance are requested.

Respectfully submitted;



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